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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JAMES RICHERSON,

Defendant and Appellant.

A123366

(Solano County Super.
Ct. No. FCR253347)

Defendant Michael James Richerson appeals a judgment entered upon a jury verdict finding him guilty of transportation of a controlled substance (Health & Saf. Code,¹ § 11379, subd. (a)) (count 1) and possession of a device for injecting a controlled substance (§ 11364) (count 2). He contends on appeal that the trial court erred in denying his motion to suppress and his request for an evidentiary hearing, and that the jury was incorrectly instructed. We affirm.

I. BACKGROUND

A. Suppression Motion

Defendant moved to suppress evidence, including methamphetamine, a spoon, syringes, and statements he made during and after his detention, on the ground they were obtained in violation of his Fourth Amendment rights against unreasonable search and seizure. (Pen. Code, § 1538.5.)

¹ All undesignated statutory references are to the Health and Safety Code.

At the hearing on the motion, Nathan Strickland, a police officer in the City of Fairfield, testified that at approximately 9:45 on the evening of March 14, 2008, he stopped a pickup truck that had no front license plate. Defendant was the driver. Strickland asked to see defendant's driver's license, and defendant instead produced a parole card, which had his photograph, his last name, and the initial of his first name.² Although defendant did not have a driver's license with him at the time, he did in fact possess a valid license. Strickland called dispatch, and was told defendant had a valid license; he was not told defendant was on probation or parole or that he was subject to a warrant. The standard procedure for the Fairfield Police Department was not to allow people to continue to drive when they did not have a driver's license in their possession.

There was a passenger in the truck, and Strickland learned that he was on parole and was the subject of an arrest warrant. He waited a few minutes for a cover officer to arrive. When the cover officer arrived, approximately 10 minutes had passed since Strickland had initially stopped the truck. Strickland did not write a citation for defendant. The cover officer arrived, and Strickland arrested defendant's passenger and placed him in the back of the patrol car. Strickland asked defendant if he had anything illegal on him, and defendant said he did not. Strickland asked him to step out of the truck and patted him down. He asked defendant if he had anything that would poke or stick him, and defendant said he had a syringe in a pocket. Strickland found the syringe, arrested defendant, handcuffed him, and had him sit on the curb. He then searched the vehicle. In the middle of the dashboard, he found a spoon with white crystal material, which was found to be methamphetamine. Defendant also told Strickland he had syringes in his shoe, and Strickland found two syringes there.

Strickland testified that when he initially detained defendant, he intended to search him and the truck to look for identification. He also testified that he conducted the search of the truck based on the facts that he had arrested the passenger and that he had found a syringe on defendant's person.

² Defendant had apparently been discharged from parole.

The trial judge stated that he thought the patsearch of defendant was “probably illegal,” but that the search of the truck was legal as a search incident to the arrest of the passenger. On the ground that the syringes would have been found in any case after Strickland found the spoon with methamphetamine on it and arrested defendant, the trial court denied the motion to suppress in its entirety.

B. Trial and Sentencing

Strickland testified at trial that after arresting defendant’s passenger, he searched the truck and found a large spoon with a white crystal material on it in the center of the dashboard. He patsearched defendant and asked whether anything would “poke, stick or hurt” him. Defendant said he had a syringe in his pocket, and when asked, told Strickland it was capped. After being arrested, defendant took his shoes off and said he had two more syringes, which were found in one of his shoes.

Strickland later scraped the crystal material from the spoon. The material was found to be methamphetamine. Strickland testified that people sometimes ingested methamphetamine by dissolving it in water in the bowl of a spoon and injecting it with a syringe.

The jury convicted defendant of transportation of methamphetamine, a felony (§ 11379, subd. (a)) and possession of a device for injecting a controlled substance, a misdemeanor (§ 11364), and the trial court found true two prior prison term allegations (Pen. Code, § 667.5, subd. (b)). In a separate case (*People v. Richerson* (Super. Ct. Solano County, 2008, No. FCR259037)),³ defendant pled no contest to assault by means of force likely to produce great bodily injury (*id.*, § 245, subd. (a)(1)), and admitted two prior prison term allegations.

In case No. FCR259037, the trial court sentenced defendant to the midterm of three years for the assault conviction, with two consecutive one-year terms for the prior prison term allegations. In the case before us now, case No. FCR253347, the court sentenced him to a concurrent three-year term for transportation of methamphetamine,

³ Case No. FCR259037 is not before us now.

time served for the paraphernalia charge, and concurrent one-year terms for the prison priors.

II. DISCUSSION

A. Denial of Suppression Motion

Defendant contends the trial court wrongly denied his suppression motion. He challenges the ruling on a variety of grounds. “The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

1. Prolonged Detention

We first address defendant’s contention that the initial detention was unreasonably prolonged. He argues that once Strickland verified his identity and the validity of his license and lack of outstanding warrants, he was obliged to ticket or warn him, then release him and his vehicle. According to defendant, Strickland’s actions in detaining him until backup arrived were not related to his traffic duties, and were therefore impermissible. (See *People v. McGaughran* (1979) 25 Cal.3d 577, 586-587 (*McGaughran*) [10-minute delay for warrant check exceeded time reasonably necessary to deal with traffic offense].)⁴ The court in *People v. Miranda* (1993) 17 Cal.App.4th

⁴ We note that in 1982, three years after *McGaughran*, the electorate passed Proposition 8, which precluded suppression of evidence obtained in violation of the search and seizure provisions of the federal or state Constitutions, except to the extent compelled by federal law. (*People v. McKay* (2002) 27 Cal.4th 601, 605 (*McKay*).) As recognized by our Supreme Court in *McKay*, a custodial arrest for even a very minor criminal offense does not violate the Fourth Amendment to the federal Constitution. (*McKay*, at p. 607, citing *Atwater v. Lago Vista* (2001) 532 U.S. 318, 354 (*Atwater*); see also *Atwater*, at pp. 324, 354 [upholding warrantless arrest of motorist for committing seatbelt violations and driving without license and proof of insurance]; see also *People v. Gomez* (2004) 117 Cal.App.4th 531, 537-540 (*Gomez*) [under rule of *Atwater* and *McKay*, prolonged detention for seatbelt violation amounting to de facto arrest did not violate Fourth Amendment.].) As noted in *Gomez*, the continuing validity of

917, 926-927 (*Miranda*) described the rule of *McGaughran* thus: “[W]hen an officer makes such a traffic stop, the stop may last only so long as is reasonably necessary to perform the duties incurred by virtue of the stop. ([*McGaughran, supra*, 25 Cal.3d] at pp. 584-587.) [¶] Thus, an officer may order the driver out of the car [citation], ask for and examine the motorist’s driver’s license and the car registration, discuss the violation and listen to any explanation, write a citation, and obtain the driver’s promise to appear. [Citation.]” However, as recognized in *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 358, “Implicit in the *McGaughran* analysis is a recognition that the circumstances of each traffic detention are unique and that the reasonableness of each detention period must be judged on its particular circumstances.”

In the circumstances of this case, the detention was not unduly delayed. Defendant does not dispute that the traffic stop was valid. The encounter took place at 9:45 in the evening. Strickland had received information that defendant’s companion was subject to an arrest warrant. Defendant’s only identification was an expired parole card, and he did not have a driver’s license in his possession. Officers in the police department normally did not allow people to continue to drive without a license in their possession. (See Veh. Code, § 12951 [licensee must have driver’s license “in his or her immediate possession at all times when driving a motor vehicle upon a highway” (subd. (a)) and must “present” it to peace officer upon demand (subd. (b))]; see also *id.*, § 40302 [person arrested for nonfelony Vehicle Code violation shall be taken before magistrate “[w]hen the person arrested fails to present his driver’s license or other satisfactory evidence of his identity for examination” (subd. (a))].) In the circumstances, it was reasonable for Strickland to wait for a backup officer before proceeding further, rather than releasing defendant to drive away immediately.⁵ Moreover, the delay was not

McGaughran is open to question in light of Proposition 8, *Atwater*, and *McKay*. (*Gomez, supra*, 117 Cal.App.4th at p. 539.) However, this question is not necessary to our resolution of the issue defendant raises.

⁵ At this point in our analysis, the question is not whether defendant’s companion was lawfully arrested pursuant to a valid warrant—and hence whether the search of the vehicle was proper as a search incident to an arrest—but whether Strickland acted

long; Strickland testified that he waited “a few minutes” for a cover officer to arrive, and when he arrived, only about 10 minutes had elapsed since he stopped the vehicle.

2. Validity of Search

The trial court concluded that the search of the vehicle was valid as a search incident to the arrest of defendant’s passenger, and that the search of defendant’s person would flow inevitably from the discovery of the methamphetamine and spoon in the vehicle.⁶ Defendant contends the trial court’s ruling was improper under the “*Harvey-Madden*” rule. (*People v. Harvey* (1958) 156 Cal.App.2d 516; *People v. Madden* (1970) 2 Cal.3d 1017.) “The rationale and general scope of the rule was summarized in *Madden*: ‘[A]lthough an officer may make an arrest based on information received through “official channels,” the prosecution is required to show that the officer who originally furnished the information had probable cause to believe that the suspect committed a felony.’ ” (*People v. Collins* (1997) 59 Cal.App.4th 988, 993 (*Collins*).) This rule has been applied to require the People to show that the warrant information

reasonably in waiting briefly for backup. Given the brevity of the delay, the late hour, the facts that defendant did not have a driver’s license in his possession, that Strickland was apparently alone, and that there were two people in the car—both of whom had been on parole—we cannot conclude Strickland acted unreasonably in the circumstances.

⁶ As defendant and the Attorney General note, after the trial in this case, the United States Supreme Court decided *Arizona v. Gant* (2009) 556 U.S. ____ [173 L.Ed.2d 485; 129 S.Ct. 1710] (*Gant*). The court ruled that the police may search the passenger compartment of a vehicle pursuant to the arrest of a recent occupant “only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” (*Id.*, 556 U.S. at p. ____ [173 L.Ed.2d at p. 501; 129 S.Ct. at p. 1723].) Division Four of the First Appellate District recently considered whether *Gant* should be applied retroactively. (*People v. Henry* (2010) 184 Cal.App.4th 1313, mod. at 185 Cal.App.4th 865a.) Noting that *Gant* was a “substantial departure from what was, by the decision’s own admission, established case law interpreting the search-incident-to-arrest exception in the context of vehicle searches . . .” (*Henry*, at p. 1326), the court concluded that the good faith exception to the exclusionary rule applied to preclude suppression of evidence found in a search conducted in good faith reliance on the law as it was understood at the time of the search (*id.* at pp. 1326-1329). Thus, the rule of *Gant* would not require suppression of evidence found during a search of the truck pursuant to the arrest of defendant’s passenger.

transmitted to the arresting officer “was not manufactured by the transmitting officer”; this burden may be satisfied by various means, including producing the actual warrant, a certified copy, or an abstract showing the existence of a facially valid warrant. (*People v. Alcorn* (1993) 15 Cal.App.4th 652, 658-660.)

During the hearing on the suppression motion, defendant contended the People had not shown the existence of a valid warrant for the arrest of his passenger and, hence, the search of the vehicle could not be upheld as incident to the arrest of the passenger. The trial court concluded defendant’s counsel had no basis to assert this objection, because he did not represent the passenger. This conclusion appears questionable, and the Attorney General does not attempt to defend it. As defendant points out, the court in *Collins* rejected an argument that a person misidentified as the subject of an arrest warrant cannot challenge his arrest pursuant to the warrant. (*Collins, supra*, 59 Cal.App.4th at p. 995.) The defendant there gave a false name, Ronald Pierce, to an officer when questioned about an auto theft. The officer called a dispatcher for a warrant check, and was told there were two outstanding arrest warrants under the name defendant had falsely given. At a hearing on the defendant’s suppression motion, the trial court overruled a *Harvey-Madden* objection. (*Collins*, at pp. 990-991.) The Court of Appeal reversed, stating, “it was appellant who was arrested, regardless of whom [the officer] thought he was arresting or how reasonable [his] conclusion that he was arresting [Pierce.] It was appellant who had a Fourth Amendment right to be free of ‘unreasonable seizures.’ Accordingly, it was incumbent upon the prosecution to prove the arrest was constitutionally reasonable. . . . [The officer’s testimony] was insufficient to establish the existence of the facially valid warrant pursuant to the *Harvey-Madden* rule.” (*Id.* at p. 996.) Analogizing to *Collins*, defendant contends the prosecution was required to prove the existence of a facially valid warrant for the arrest of his passenger.

The parties have drawn our attention to no cases considering whether the *Harvey-Madden* rule applies to a defendant who is charged based on evidence found during a search incident to the arrest of another person. It appears to us that, as in *Collins*, the prosecution should be required to show that the officer had probable cause to arrest the

other person—here, defendant’s passenger. We need not finally resolve this issue, however, because we conclude the search of the truck was valid on an alternate ground.⁷

At a traffic stop, an officer may ask for and examine a motorist’s driver’s license and car registration. “If the driver is unable to produce a driver’s license, registration, or satisfactory proof of identity, then the officer may, depending on the circumstances, reasonably expand the scope of the stop . . .” (*Miranda, supra*, 17 Cal.App.4th at p. 927.) In *In re Arturo D.* (2002) 27 Cal.4th 60, 78-79, our Supreme Court concluded that where a driver has not produced a driver’s license or registration when stopped for a traffic violation, an officer may enter the vehicle to conduct a limited search for registration and identification documents. As the court stated, “Limited warrantless searches for required registration and identification documentation are permissible when, following the failure of a traffic offender to provide such documentation to the citing officer upon demand, the officer conducts a search for those documents in an area where such documents reasonably may be expected to be found.” (*Id.* at p. 86, italics omitted.) In conducting such a search, the officer need not take the driver’s word for it that he or she does not have a license. (*Id.* at p. 78.)

Strickland testified to more than one intention in searching the truck. Defendant did not provide a driver’s license, and the parole card he produced had only his photo, last name, and the first letter of his first name. Strickland testified that after defendant’s passenger was arrested, defendant was detained. He was asked: “Now, as part of the detention, *were you going to conduct a search of both the defendant and the vehicle to try to find identification?*” (Italics added.) He answered, “Yes.” We recognize that the truck was in fact searched *after* Strickland patsearched defendant, found a syringe, and arrested

⁷ Where evidence of a search is fully developed at a suppression hearing, the facts are undisputed, and it is unlikely that the defendant could have introduced any further evidence to support a motion to suppress, the Court of Appeal may uphold a search on an alternate ground not raised below. (*People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1004-1005; see also *Green v. Superior Court* (1985) 40 Cal.3d 126, 138.) Here, although the trial court based its ruling on the theory that the search of the truck was valid as incident to the arrest of defendant’s passenger, the People also relied below on the theory that Strickland was entitled to search the vehicle for further identification.

him.⁸ However, Strickland's testimony indicates that before discovering grounds to arrest defendant, he had intended to search the truck in any case for identification. Once Strickland was in the truck, he saw the spoon in plain view on the dashboard. Even without considering the arrests of defendant and his passenger as a basis for the search, Strickland was entitled to look for defendant's identification, and was not required to close his eyes to what he saw in plain view during that legitimate search. (See *People v. LeBlanc* (1997) 60 Cal.App.4th 157, 165-166; see also *Miranda*, *supra*, 17 Cal.App.4th at p. 927.)

Defendant contends, however, that Strickland was not authorized to search for his identification, because he had given Strickland his parole card and Strickland had verified with the dispatcher that he had a valid license. What suffices as proof of identity under Vehicle Code section 40302, subdivision (a), however, is a matter for the discretion of the officer, as long as the officer does not base his or her discretion on invalid criteria, such as race, religion, or other arbitrary classifications. (*McKay*, *supra*, 27 Cal.4th at pp. 622-623.)⁹ Here, the parole card did not contain defendant's full name, and Strickland had not been able to examine his license. (See *id.* at p. 622 ["the driver is expected to surrender [his or her driver's license] to the peace officer for examination, not merely to recite the information contained therein"].) Nor is there any indication that the card bore defendant's "physical description, current mailing address, and signature." (*McKay*, *supra*, 27 Cal.4th at p. 620.) In the circumstances, Strickland could reasonably conduct a limited search for the license.

⁸ When asked the purpose of the vehicle search, Strickland testified, "[Defendant] was placed under arrest, and there was a wanted parolee in the passenger seat as well."

⁹ *McKay* notes that there was "no dispute that at least one category of identification qualifies as 'other satisfactory evidence of . . . identity' " for purposes of Vehicle Code section 40302: "those forms of documentary evidence that are the functional equivalent of a driver's license. This would include a state-issued identification card ([Veh. Code,] § 13005) and other current, reliable documentary evidence of identity that, like a driver's license, bears the person's photograph, physical description, current mailing address, and signature, and is serially or otherwise numbered. [Citations.]" (*McKay*, *supra*, 27 Cal.4th at pp. 620-621.)

Nor are we persuaded by defendant's contention that the search cannot be justified as a search for identification because Strickland did not write a ticket for any Vehicle Code violations. Nothing in the record indicates that had Strickland not found evidence of more serious offenses, he would not have cited defendant for driving without a front license plate and with no license in his possession.¹⁰

B. Instruction Regarding Paraphernalia

Section 11364, subdivision (a), provides in pertinent part: "It is unlawful to possess . . . any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking" various controlled substances, including methamphetamine. (See § 11055, subd. (d)(2).)

The jury was instructed pursuant to CALCRIM No. 2410 that to prove this offense, the People must prove that: "1. The defendant unlawfully possessed an object that can be used to unlawfully inject or consume a controlled substance; [¶] 2. The defendant knew of the object's presence, and [¶] 3. The defendant knew that the object could be used to unlawfully inject or consume a controlled substance."¹¹

Defendant contends this instruction misstates the applicable law. According to defendant, section 11364 prohibits possession only of items that have *actually* been used in the past or were *presently* used to consume narcotics. The Attorney General disagrees, contending that section 11364 "shows a clear intent to prohibit possession, without a prescription . . . or other legal exemption, of items that can be used to inject controlled

¹⁰ Defendant does not contend that, having found the spoon with methamphetamine in the truck, Strickland could not permissibly search him and discover the syringes on his person.

¹¹ The first "unlawfully" in paragraph No. 1 of this instruction (in the phrase "The defendant unlawfully possessed . . .") is in brackets in CALCRIM, meaning its inclusion might be necessary or appropriate given the circumstances of the case. (1 CALCRIM (2009-2010 ed.) Guide for Using, p. xxiv.) The bench notes indicate that the bracketed word "unlawfully" should be given if the defendant raises a defense that he or she was legally authorized to possess needles or syringes for personal use. (CALCRIM No. 2410, *supra*, Bench Notes, Defenses—Instructional Duty, pp. 346-347.) Although no such defense was asserted here, the trial court included the word "unlawfully" in the instructions to the jury.

substances,” and arguing that there was no legislative intent to differentiate between new and used syringes.¹²

We agree that the language of the instruction is too broad. An item that “can be used” to consume narcotics (CALCRIM No. 2410) is not necessarily the same as an item that “is used” for that purpose. As stated in *In re Johnny O.* (2003) 107 Cal.App.4th 888, 958, section 11364 “makes the possession of paraphernalia illegal *if, and only if, it is used for unlawfully injecting or smoking* specified controlled substances.” (Italics added.) Similarly, in *Music Plus Four, Inc. v. Barnet* (1980) 114 Cal.App.3d 113, 128-129, the Court of Appeal stated that section 11364 “penalizes possession of the listed items *when used for the proscribed purposes . . .*” (Italics added.) Contrary to these authorities, and contrary to the plain language of the statute, CALCRIM No. 2410 as written is not restricted to objects that *are used* for such unlawful purposes. It therefore misstates the law.

This is not to say that we agree with defendant that the People must prove the objects in question were used, rather than new. Quoting *People v. Nickles* (1970) 9 Cal.App.3d 986, 993, the court in *People v. Chambers* (1989) 209 Cal.App.3d Supp. 1, 4, stated: “ ‘ “Whether [or not this] is a device, contrivance, instrument or paraphernalia for the [consumption of narcotics] is a question of fact.” [Citations.] That fact, where the subject matter is sufficiently beyond common experience, may be determined from the opinion of an expert witness even though the fact embraces the ultimate issue to be decided. [Citations.]’ [Citation.]” The court in *Chambers* rejected the defendant’s contention that section 11364 was unconstitutionally vague and overbroad, concluding that the statute gave a person of ordinary intelligence reasonable opportunity to know what was prohibited, and finding sufficient the testimony of a police officer, an expert witness, that “the purpose of the pipe defendant possessed was the

¹² We reject the Attorney General’s contention that defendant forfeited this point by failing to raise it below. On appeal, we may consider alleged instructional error, even if no objection was made in the trial court, if the defendant’s substantial rights were affected. (Pen. Code, § 1259.) We exercise our discretion to do so here. (See *People v. Johnson* (2004) 119 Cal.App.4th 976, 984-985.)

smoking of cocaine.” (*Chambers*, at p. Supp. 4.) Thus, *Chambers* suggests that a person may violate section 11364 by possessing paraphernalia *the purpose of which* was to consume narcotics. If a defendant were found, for instance, with methamphetamine and a new syringe and needle, a properly instructed jury might reasonably conclude the purpose of the paraphernalia was to inject the methamphetamine and find the defendant had violated section 11364.

We must now consider whether defendant was prejudiced by the erroneous instruction. “An instruction that omits or removes an element of an offense from consideration by the jury may be harmless if the error is harmless beyond a reasonable doubt.” (*People v. Hayes* (2009) 171 Cal.App.4th 549, 560.) In considering whether this standard is met, we may consider counsel’s argument to the jury. (*Ibid.*)

We find the error harmless beyond a reasonable doubt. The jury found defendant guilty of transporting methamphetamine, a verdict that necessarily included findings that he transported a usable amount and that he knew the substance was methamphetamine. (§ 11379, subd. (a); CALCRIM No. 2304.) The methamphetamine was in a spoon, and Strickland testified that one way to ingest methamphetamine was to dissolve the methamphetamine crystals in water in a spoon and inject the resulting solution with a syringe. Defendant was found with three syringes, two of them hidden in his shoe. There was no evidence—and defendant did not attempt to argue—that he was legally authorized to possess the syringes for his personal use. (See § 11364, subd. (c).) His only argument was that there was no evidence the syringes (which had not been preserved) were in functioning condition, and therefore there was no evidence that they could be used to inject controlled substances. By its guilty finding, the jury rejected this argument. In the circumstances, we see no possibility that the jury would have found defendant not guilty of possessing paraphernalia had it been properly instructed.

C. Hearing on Admissibility of Defendant’s Statements

Defendant also contends the trial court erred in denying his request for a hearing on the voluntariness of his statements to Strickland. The trial court indicated that it did not “see any need” for a hearing on the admissibility of defendant’s statements, noting

that it had already heard the suppression motion, so it “sort of [knew] what the case [was] about,” and that defendant was not in custody at the time he told Strickland he had a syringe. At trial, the People introduced evidence that defendant said he had a syringe in his pocket and the syringe was capped, and that after being arrested, he took off his shoes and said he had two more syringes.

Evidence Code section 402, subdivision (b), provides: “The court may hear and determine the question of the admissibility of evidence out of the presence or hearing of the jury; but in a criminal action, the court shall hear and determine the question of the admissibility of a confession or admission of the defendant out of the presence and hearing of the jury if any party so requests.” “[U]nder Evidence Code sections 402 and 405, the voluntariness of a confession is a ‘preliminary fact’ that a trial judge must determine before the confession may be submitted to the jury. [Citation.]” (*People v. Hoyos* (2007) 41 Cal.4th 872, 897, italics omitted; see also *People v. Rowe* (1972) 22 Cal.App.3d 1023, 1029.) In determining whether the failure to conduct a hearing under Evidence Code section 402 was harmless, we do not speculate about how the court would have ruled had a hearing been held, unless we can say beyond a reasonable doubt that the trial court would have found the defendant’s statements voluntary. (*In re Juma P.* (1988) 204 Cal.App.3d 1228, 1237.)

We find any error in failing to hold a hearing on the admissibility of defendant’s statements harmless beyond a reasonable doubt. The trial court had held a hearing on the suppression motion, and it is clear from the record the court was of the view that at least defendant’s initial statement about the syringe was not the product of a custodial interrogation. (See *Miranda v. Arizona* (1966) 384 U.S. 436.)¹³ In any case, the admission of the statements was undoubtedly harmless. (See *People v. Cahill* (1993) 5 Cal.4th 478, 509-510 [overruling previous decisions that held erroneous admission of

¹³ In his testimony at the suppression hearing, Strickland did not specify when defendant made the statement about the syringes in his shoe. At trial, Strickland testified that defendant made the statement after he was arrested, as he was being put into the patrol vehicle.

coerced confession reversible per se].) We recognize the prosecutor argued to the jury that defendant's statement he had a syringe in his pocket showed he knew of its presence. However, the prosecutor also argued that defendant's knowledge was shown by the fact "he kicks off his shoes and the syringes are in his shoe." In our view, even without hearing defendant's statements, the jury would have inevitably concluded from the presence of the syringes not only in defendant's pocket, but also concealed in his shoe, coupled with the presence of a spoon containing methamphetamine on the dashboard, that he was aware of the presence and nature of the syringes.

III. DISPOSITION

The judgment is affirmed.

RIVERA, J.

We concur:

REARDON, Acting P.J.

SEPULVEDA, J.